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WON HYUN ENTERPRISES INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CRAIG YATES, an individual; and
DISABILITY RIGHTS ENFORCEMENT
EDUCATION SERVICES; HELPING YOU
HELP OTHERS, a California public benefit
corporation,

Plaintiffs,

vs.

ZEPHYR CAFÉ; MAGDALENE Y. HO,
TRUSTEE OF THE NG REVOCABLE
LIVING TRUST, and TRUSTEE OF THE
NG SURVIVOR'S TRUST; and WON
HYUN ENTERPRISES INC., a California
corporation,

Defendants.

Case No. CV08-2293 PJH

**DEFENDANT WON HYUN
ENTERPRISES INC.'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT; AND**

DEMAND FOR JURY TRIAL

DATE FILED: May 2, 2008

Defendant WON HYUN ENTERPRISES INC. (hereinafter "Defendant") answers the First Amended Complaint of Plaintiffs as follows:

Paragraph 1.

Defendant is informed and believes that Plaintiffs bring this action as a civil rights action for discrimination but deny any allegations of discrimination, statutory violations or liability of any nature on its part. Assuming Plaintiff's use of the capitalized word "ZEPHYR" references a

1 café business common known as the “Zephyr Café” located at 3643 Balboa Street, San Francisco,
2 California, Defendant admits that the said location is a place of public accommodation as defined
3 by state and federal law. Defendant lacks sufficient information or belief to respond to Plaintiffs’
4 allegations pertaining to YATES, DREES, or the membership of DREES are members of a class
5 of persons with physical disabilities and on that basis deny it. In further answering, Defendant
6 does not have sufficient information to form a belief as to the truth of the remaining allegations
7 and on that basis denies all other allegations contained therein.

8 **Paragraph 2.**

9 Defendant lacks sufficient information or belief to respond to Plaintiffs’ allegations
10 pertaining to YATES including that he is a person with physical disabilities or that he was a guest
11 at ZEPHYR’S on any of the dates alleged and on that basis denies all allegations therein.
12 Defendant lacks sufficient information or belief at this time as to the federal or California legal
13 requirements as to its west entrance, east entrance, service counter or the unisex restroom and on
14 that basis denies allegations pertaining to “proper legal access” to ZEPHYR’S or its west entrance,
15 east entrance, service counter or the unisex restroom, or that YATES’ civil rights were violated.
16 In further answering, Defendant does not have sufficient information to form a belief as to the
17 truth of the remaining allegations and on that basis denies all other allegations contained therein.

18 **Paragraph 3.**

19 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
20 the allegations and statements in this paragraph and on that basis denies this paragraph.

21 **Paragraph 4.**

22 Defendant admits this paragraph.

23 **Paragraph 5.**

24 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
25 the allegations and statements in this paragraph and on that basis denies this paragraph.

26 **Paragraph 6.**

27 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
28 the allegations and statements in this paragraph and on that basis denies this paragraph.

1 **Paragraph 7.**

2 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
3 the allegations and statements in this paragraph and on that basis denies this paragraph.

4 **Paragraph 8.**

5 Defendant admits it is a lessee of the premises located at 3543 Balboa Street, San
6 Francisco, California and operates a business commonly known as the Zephyr Café. In further
7 answering, Defendant lacks sufficient information to form a belief as to the truth of or to respond
8 to the remaining allegations in this paragraph and on that basis denies them.

9 **Paragraph 9.**

10 Defendant denies that it own and operates the Zephyr Café in joint venture with any of the
11 other named defendants. Defendant lacks sufficient information to form a belief as to the truth of
12 or to respond to the remaining allegations in this paragraph and on that basis denies them. To the
13 extent legal conclusions are alleged in paragraph 9, no response is required.

14 **Paragraph 10.**

15 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
16 the allegations in this paragraph and on that basis denies them. To the extent legal conclusions are
17 alleged in paragraph 10, no response is required.

18 **Paragraph 11.**

19 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
20 the allegations in this paragraph as the term ZEPHYR CAFÉ is not defined. Defendant lacks
21 sufficient information to form a belief as to the truth of or to respond to the allegations in this
22 paragraph and on that basis denies them. To the extent legal conclusions are alleged in paragraph
23 11, no response is required.

24 **Paragraph 12.**

25 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
26 the allegations in this paragraph and on that basis denies them.

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Paragraph 13.

Defendant denies advertising, publicizing or holding out the ZEPHYR CAFÉ as being handicapped accessible and handicapped usable. In further response, Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations as to other defendants referred to in this paragraph and on that basis denies them.

Paragraph 14.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 15.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 16.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 17.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 18.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 19.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 20.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

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Paragraph 21.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 22.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 23.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 24.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 25.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 26.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 27.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 28.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 29.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

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Paragraph 30.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 31.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 32.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 33.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 34.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 35.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 36.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph and on that basis denies them.

Paragraph 37.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations in this paragraph, and on that basis denies them.

Paragraph 38.

The first sentence does not identify who returned to ZEPHYR'S and is an incomplete sentence, and therefore Defendant cannot respond to this allegation. Defendant admits that remedial work Plaintiffs allege that is the subject of this action was not done by April 16, 2008. In

1 further answer, Defendant lacks sufficient information to form a belief as to the truth of or to
2 respond to the remaining allegations in this paragraph and on that basis denies them.

3 **Paragraph 39.**

4 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
5 the allegations in this paragraph and on that basis denies them.

6 **Paragraph 40.**

7 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
8 the allegations in this paragraph and on that basis denies them.

9 **Paragraph 41.**

10 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
11 the allegations in this paragraph and on that basis denies them.

12 **Paragraph 42.**

13 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
14 the allegations in this paragraph and on that basis denies them.

15 **Paragraph 43.**

16 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
17 the allegations in this paragraph and on that basis denies them.

18 **Paragraph 44.**

19 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
20 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
21 contains legal conclusions, no response is required.

22 **Paragraph 45.**

23 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
24 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
25 contains legal conclusions, no response is required.

26 **Paragraph 46.**

27 Defendant admits four letters are attached as exhibit A to the First Amended Complaint.
28 Defendant lacks sufficient information to form a belief as to the truth of or to respond to the

1 allegations in this paragraph that Plaintiff CRAIG YATES sent the four letters referenced in the
2 First Amended Complaint, and on that basis denies the remaining allegations in this paragraph.
3 Defendant also denies its failure to respond to such letters evidence its intent “not to seek or
4 engage in an early and reasonable resolution of the matter.” To the extent that this paragraph
5 contains legal conclusions, no response is required.

6 **Paragraph 47.**

7 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
8 the allegations against other named defendants and on that basis denies such allegations.
9 Defendant denies that it did not act as reasonable and prudent tenant and the remaining allegations
10 therein. To the extent that this paragraph contains legal conclusions, no response is required.

11 **Paragraph 48.**

12 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
13 the allegations against other named defendants and on that basis denies such allegations.
14 Defendant lacks sufficient information to form a belief as to the truth of or to respond to the
15 remaining allegations in this paragraph and on that basis denies them. To the extent that this
16 paragraph contains legal conclusions, no response is required.

17 **Paragraph 49.**

18 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
19 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
20 contains legal conclusions, no response is required.

21 **Paragraph 50.**

22 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
23 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
24 contains legal conclusions, no response is required.

25 **Paragraph 51.**

26 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
27 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
28 contains legal conclusions, no response is required.

1 **Paragraph 52.**

2 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
3 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
4 contains legal conclusions, no response is required.

5 **Paragraph 53.**

6 Defendant denies carrying out any construction that would trigger access requirements
7 under both California law and the American with Disabilities Act of 1990. Defendant lacks
8 sufficient information to form a belief as to the truth of or to respond to the remaining allegations
9 in this paragraph and on that basis denies them. To the extent that this paragraph contains legal
10 conclusions, no response is required.

11 **Paragraph 54.**

12 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
13 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
14 contains legal conclusions, no response is required.

15 **Paragraph 55.**

16 This paragraph is unintelligible and cannot determine Plaintiffs' allegations therein to
17 provide a response. Moreover, Defendant lacks sufficient information to form a belief as to the
18 truth of or to respond to the allegations in this paragraph and on that basis denies them. To the
19 extent that this paragraph contains legal conclusions, no response is required.

20 **Paragraph 56.**

21 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
22 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
23 contains legal conclusions, no response is required.

24 **Paragraph 57.**

25 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
26 the allegations in this paragraph and on that basis denies them. To the extent that this paragraph
27 contains legal conclusions, no response is required.

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1 **Paragraph 58.**

2 This paragraph is unintelligible and cannot determine Plaintiffs' allegations therein to
3 provide a response. To the extent Defendant understands the allegations in this paragraph,
4 Defendant denies any modification or alteration to the building during its lease period. Defendant
5 further denies its action or omission with actual or implied malice toward plaintiffs with willful
6 and conscious disregard in violation of any statute or otherwise. Defendant lacks sufficient
7 information to form a belief as to the truth of or to respond to the remaining allegations in this
8 paragraph and on that basis denies them. To the extent that this paragraph contains legal
9 conclusions, no response is required.

10 **Paragraph 59.**

11 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
12 the allegations against other defendants in this paragraph and on that basis denies them.
13 Defendant denies construction or alteration of the building, and further denies actual or
14 constructive notice of violation of civil rights of persons with physical disabilities. To the extent
15 that this paragraph contains legal conclusions, no response is required.

16 **Paragraph 60.**

17 This paragraph is unintelligible and cannot determine Plaintiffs' allegations therein to
18 provide a response. The first sentence of this paragraph is unintelligible and incomprehensible,
19 and on that basis Defendant denies the allegation(s) contained therein. To the extent that
20 Defendant understands the allegations, Defendant denies actual or constructive notice of the
21 physical configuration of the facilities in violation of civil rights of persons with physical
22 disabilities or that it acted or omitted from acts knowingly, willfully, or in conscious disregard to
23 plaintiffs or other persons with physical disabilities. In further answering, Defendant lacks
24 sufficient information to form a belief as to the truth of or to respond to the remaining allegations
25 in this paragraph and on that basis denies them.

26 **Paragraph 61.**

27 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
28 the allegations in this paragraph and on that basis denies them.

FIRST CAUSE OF ACTION

Paragraph 62.

Defendant incorporates by this reference its answer in admission, denial or otherwise to previous paragraph above as if set forth fully.

Paragraph 63.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 64.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 65.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 66.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 67.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 68.

Defendant denies it engages in discriminatory practices, procedures or eligibility criteria. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is

1 required. Defendant lacks sufficient information to form a belief as to the truth of or to respond to
2 the remaining allegations/statements in this paragraph and on that basis denies them.

3 **Paragraph 69.**

4 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
5 the allegations/statements in this paragraph and on that basis denies them. To the extent that this
6 paragraph contains excerpts of law or legal conclusions, no response is required.

7 **Paragraph 70.**

8 Defendant's lease of the subject premises began in 2003, and Defendant also lacks
9 sufficient information to form a belief as to the truth of or to respond to the allegations/statements
10 in this paragraph and on that basis denies them. To the extent that this paragraph contains
11 excerpts of law or legal conclusions, no response is required.

12 **Paragraph 71.**

13 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
14 the allegations/statements in this paragraph and on that basis denies them. To the extent that this
15 paragraph contains excerpts of law or legal conclusions, no response is required.

16 **Paragraph 72.**

17 Defendant denies violating any law or denying the rights of plaintiffs and other persons
18 with physical disabilities to access public accommodation. Defendant lacks sufficient information
19 to form a belief as to the truth of or to respond to the remaining allegations/statements in this
20 paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of
21 law or legal conclusions, no response is required.

22 **Paragraph 73.**

23 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
24 the allegations/statements in this paragraph and on that basis denies them. To the extent that this
25 paragraph contains excerpts of law or legal conclusions, no response is required.

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SECOND CAUSE OF ACTION

Paragraph 74.

Defendant incorporates by this reference its answer in admission, denial or otherwise to previous paragraph above as if set forth fully.

Paragraph 75.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 76.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 77.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 78.

Defendant denies it knowingly and willfully failed or refused to remove architectural barriers in violation of Civil Code §§ 54 and 54.1. Defendant lacks sufficient information to form a belief as to the truth of or to respond to the remaining allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 79.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

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Paragraph 80.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 81.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 82.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 83.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

THIRD CAUSE OF ACTION

Paragraph 84.

Defendant incorporates by this reference its answer in admission, denial or otherwise to previous paragraph above as if set forth fully.

Paragraph 85.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 86.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph as Defendant's lease of the subject premises began in

2003 and on that basis denies them. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 87.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph as Defendant's lease of the subject premises began in 2003 and on that basis denies them. Defendant further denies undertaking alteration or modification triggering access requirements pursuant to ASA or California Building Standards Code. To the extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

Paragraph 88.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains legal conclusions, no response is required.

Paragraph 89.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them.

Paragraph 90.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them. To the extent that this paragraph contains legal conclusions, no response is required.

Paragraph 91.

Defendant lacks sufficient information to form a belief as to the truth of or to respond to the allegations/statements in this paragraph and on that basis denies them.

FOURTH CAUSE OF ACTION

Paragraph 92.

Defendant incorporates by this reference its answer in admission, denial or otherwise to previous paragraph above as if set forth fully.

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1 **Paragraph 93.**

2 Defendant denies its acts or omissions violate § 51 of the Civil Code, or that is failed to act
3 as a reasonable and prudent public accommodation. Defendant lacks sufficient information to
4 form a belief as to the truth of or to respond to the remaining allegations/statements in this
5 paragraph and on that basis denies them. To the extent that this paragraph contains excerpts of
6 law or legal conclusions, no response is required.

7 **Paragraph 94.**

8 Defendant denies its acts or omissions are discriminatory in nature or in violation of § 51
9 of the Civil Code. To the extent that this paragraph contains excerpts of law or legal conclusions,
10 no response is required.

11 **Paragraph 95.**

12 Defendant denies its acts or omissions denied Plaintiffs full and equal accommodation or
13 otherwise in violation of Civil Code sections 51 and 51.5. To the extent that this paragraph
14 contains excerpts of law or legal conclusions, no response is required.

15 **Paragraph 96.**

16 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
17 the allegations/statements in this paragraph and on that basis denies them. To the extent that this
18 paragraph contains excerpts of law or legal conclusions, no response is required.

19 **Paragraph 97.**

20 Defendant lacks sufficient information to form a belief as to the truth of or to respond to
21 the remaining allegations/statements in this paragraph and on that basis denies them. To the
22 extent that this paragraph contains excerpts of law or legal conclusions, no response is required.

23 **PRAYER FOR RELIEF**

24 I. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages
25 prayed for.

26 II. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages
27 prayed for.
28

III. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages prayed for.

IV. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages prayed for.

V. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages prayed for.

VI. Defendant denies that Plaintiffs are entitled to the relief, remedies and/or damages prayed for.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: (Failure to State a Claim)

1. Plaintiffs' complaint and each "cause of action" purportedly contained therein, fails to state facts sufficient to constitute a cause of action or to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE: (Comparative Fault)

2. If Defendant is adjudged, decreed, or otherwise determined to be liable to Plaintiffs, then Defendant would be entitled to apportion the degree of their fault or responsibility with and between the degree of fault or responsibility attributable to Plaintiffs and/or to any other responsible parties, either named or unnamed. The amount of damages attributable to these answering Defendant, if any, must be abated, reduced, or eliminated to the extent that Plaintiffs' own fault, or the fault of any other parties, contributed to Plaintiffs' damages.

THIRD AFFIRMATIVE DEFENSE: (Failure to Mitigate)

3. Plaintiffs failed to mitigate their damages, if any there were.

FOURTH AFFIRMATIVE DEFENSE: (Statute of Limitations)

4. Plaintiffs' complaint and each cause of action therein are barred by the applicable statute of limitations provisions of both State and Federal law.

FIFTH AFFIRMATIVE DEFENSE: (Lack of Standing)

5. Neither Plaintiff has standing to bring this lawsuit. Plaintiff DREES further lacks

1 standing because it, as an organization, was never even at the property, and therefore could not
2 have suffered damages.

3 **SIXTH AFFIRMATIVE DEFENSE:** (Failure to Exhaust Administrative Remedies)

4 6. Plaintiffs' claims are barred, in whole or in part, because they failed to exhaust their
5 administrative remedies.

6 **SEVENTH AFFIRMATIVE DEFENSE:** (Removal of Barriers Not Readily Achievable)

7 7. Plaintiffs' claims are barred, in whole or in part, because removal of the alleged
8 architectural barriers, the existence of which is denied, was not readily achievable.

9 **EIGHTH AFFIRMATIVE DEFENSE:** (Substantial Compliance with State and Federal Law)

10 8. Plaintiffs' claims are barred, in whole or in part, because Defendants have
11 substantially, if not fully, complied with the requirements of both State and Federal disability
12 laws.

13 **NINTH AFFIRMATIVE DEFENSE:** (Double Recovery/ Failure to Elect)

14 9. Plaintiffs improperly seek a windfall by claiming duplicative damages for the same
15 conduct.

16 **TENTH AFFIRMATIVE DEFENSE:** (Estoppel)

17 10. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

18 **ELEVENTH AFFIRMATIVE DEFENSE:** (Unclean Hands)

19 11. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

20 **TWELFTH AFFIRMATIVE DEFENSE:** (Failure to Give Notice)

21 12. Plaintiffs' claims are barred in whole or in part because Plaintiffs failed to give
22 notice to Defendant of Plaintiffs' need for accommodation.

23 **THIRTEENTH AFFIRMATIVE DEFENSE:** (Equivalent Services and Accessibility Available)

24 13. Plaintiffs' claims are barred in whole or in part to the extent that they seek
25 equivalent service, access, and enjoyment of the facility which is excused by law because it is not
26 readily achievable, and/or alternative methods of accessibility are available.

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FOURTEENTH AFFIRMATIVE DEFENSE: (Good Faith Defenses)

14. Defendant has good faith defenses based in law and/or fact, which if successful would preclude recovery by Plaintiffs based on the allegations of the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE: (Accommodations are Excused by Law)

15. Complaint seeks accommodations and modifications of the facility that are excused by law because they are not readily achievable, would fundamentally alter the nature of the goods and services offered and/or would impose an undue hardship on the facility.

SIXTEENTH AFFIRMATIVE DEFENSE: (Defendant in Compliance with Applicable Law)

16. The facility is reasonably accessible to and usable by individuals with physical disabilities in accordance with the Americans with Disabilities Act.

SEVENTEEN AFFIRMATIVE DEFENSE: (Failure to Act in Good Faith)

17. Plaintiffs failed to act in good faith in bringing their claims against Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE: (Intervening and Superseding Causes)

18. Acts, omissions, and/or conduct of others, their agents, assignees, and experts constituted intervening and superseding causes of Plaintiffs' damages, if any, thereby relieving Defendant from any liability which it may have to Plaintiffs.

NINETEENTH AFFIRMATIVE DEFENSE: (Treble Damages Barred)

19. Plaintiffs fail to state a claim sufficient to sustain an award of treble damages or punitive damage.

TWENTIETH AFFIRMATIVE DEFENSE: (Attorneys' Fees Barred)

20. Plaintiffs fail to allege a cause of action upon which attorneys' fees and costs could be granted.

TWENTY-FIRST AFFIRMATIVE DEFENSE: (Equitable Relief Barred)

21. Plaintiffs fail to allege a cause of action upon which equitable relief could be granted.

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TWENTY-SECOND AFFIRMATIVE DEFENSE: (Other Defenses)

22. Defendant reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity, that may be available now or may become available in the future based on discovery or any other factual investigation in this case.

WHEREFORE, Defendant WON HYUN ENTERPRISES, INC. prays that judgment be entered as follows:

1. That Plaintiffs take nothing by reason of the complaint and that judgment be entered in favor of Defendant;
2. That Defendant be awarded attorneys' fees and costs;
3. That Defendant be awarded costs of suit herein, and
4. For such other and further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL.

Defendant hereby respectfully request jury trial for all causes of action and/or claims for which a jury is permitted.

DATED: June 9, 2008.

BAY CAPITAL LEGAL P.C.

By: _____/s/_____

Jaemin Chang
Attorneys for Defendant
WON HYUN ENTERPRISES INC.